

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER LEE JENKINS,

Plaintiff, No. CIV S-04-2520 LKK JFM P

vs.

ARNOLD SCHWARZENEGGER,

Defendant. ORDER

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Plaintiff is a state prisoner proceeding pro se with a civil rights complaint pursuant to 42 U.S.C. § 1983. On April 25, 2005, this court granted plaintiff an extension of time in which to file his second amended complaint until May 31, 2005, but held the April 13, 2005 findings and recommendations in abeyance pending receipt of his second amended complaint. On May 2, 2005, plaintiff filed objections to the findings and recommendations, dated April 22, 2005, which apparently crossed in the mail with this court's April 25, 2005 order. In his May 2, 2005 objections, plaintiff seeks additional time to file his second amended complaint, but states he can file his amended complaint by May 31, 2005. Since that is the new deadline set by this court's April 25, 2005 order, plaintiff will be directed to file his second amended complaint by May 31, 2005.

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1 Plaintiff also seeks permission to pursue the instant action as a class action.  
2 Plaintiff, however, is a non-lawyer proceeding without counsel. It is well established that a  
3 layperson cannot ordinarily represent the interests of a class. See McShane v. United States, 366  
4 F.2d 286 (9th Cir. 1966). This rule becomes almost absolute when, as here, the putative class  
5 representative is incarcerated and proceeding pro se. Oxendine v. Williams, 509 F.2d 1405,  
6 1407 (4th Cir. 1975). In direct terms, plaintiff cannot "fairly and adequately protect the interests  
7 of the class," as required by Rule 23(a)(4) of the Federal Rules of Civil Procedure. See Martin v.  
8 Middendorf, 420 F. Supp. 779 (D.D.C. 1976). This action, therefore, will not be construed as a  
9 class action and instead will be construed as an individual civil suit brought by plaintiff.<sup>1</sup>

10 Accordingly, IT IS HEREBY ORDERED that plaintiff shall file his second  
11 amended complaint no later than May 31, 2005. No further extensions of time will be granted.  
12 DATED: May 10, 2005.

13   
14 UNITED STATES MAGISTRATE JUDGE  
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1 Plaintiff has been attaching copies of prior court orders as well as his own prior court  
2 filings to documents filed with the court. (See February 7, 2005 Request, and May 2, 2005  
3 Objections.) Plaintiff is advised that the court retains copies of all courts filings, as well as court  
4 orders, so plaintiff is not required to attach copies of prior filings to future filings.